IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Regular Second Appeal No.74 of 1996
Judgment Reserved on: 13.08.2007
Date of decision:21.08.2007

Sita Devi ….**Appellant**

Versus

Mohinder Singh & Others ….**Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellant: Mr.Baldev Singh, Advocate.

For the Respondent: Ms.Seema Guleria, Advocate.

Dev Darshan Sud,J.

This is the plaintiff's second appeal against the judgment and decree of the learned District Judge, Hamirpur, affirming the judgment and decree passed by the learned trial Court dismissing the suit of the plaintiff for possession of the suit land, based on an agreement Ex.PW-2/A entered into between the plaintiff and her mother-in-law Smt.Rahaunsu Devi, who was defendant No.1 in the suit. A decree declaring gift deed, the suit land, made in favour of defendant No.2, Kishan (who was the brother-in-law of the plaintiff), to be null and void and in the alternative a decree for recovery of Rs.35,000/- was prayed for.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

The plaintiff is the daughter-in-law of Rahaunsu Devi (who died during the pendency of the appeal before the learned District Judge). The plaintiff pleaded that her husband was living jointly with defendants 1 and 2 ; she and her husband had been looking after them. At the time when the marriage of defendant No.2 Kishan, brother-in-law of the plaintiff, was to be solemnized, the family was under financial constraint. In these circumstances, the mother-in-law of the plaintiff, defendant No.1, approached her with the request that the plaintiff should part with her jewelry in order to tide over the financial crises. The ornaments/jewelry of the plaintiff was given to the bride of defendant No.2. It was agreed between them that after the solemnization of the marriage the ornaments or their value in money would be returned to the plaintiff. The defendants were not in a position to fulfill the promises made to the plaintiff, therefore, on 20.3.1983 defendant No.1 executed an agreement Ex.PW-2/A promising to transfer the suit land in favour of the plaintiff. The case set up by the plaintiff is that despite numerous requests having been made to defendant No.1, she refused to honour the agreement Ex.PW-2/A on one pretext or the other. Her real intention and motive was to transfer/gift this land to her son defendant No.2. The plaintiff pleaded that the gift deed was null and void and that she was

entitled to the suit land on the basis of the solemn promise having been made by defendant No.1 and as evidenced by Ex.PW-2/A.

The suit was resisted by the defendants on a number of grounds. It was alleged that the plaintiff or her husband never lived together with the family; no services were rendered by her or her husband as alleged. Defendant No.1 submitted that the marriage of defendant No.2 was performed/solemnized by her without any help or assistance in any manner from the plaintiff or her husband and least of all by borrowing her ornaments as alleged. The agreement was denounced as being a forgery. The learned trial Court, framed ten issues and on the crucial issue, as to whether the plaintiff had parted with her ornaments the Court held against her. As a consequence, the other issues, the onus of proof of which was on the plaintiff, were also decided against the plaintiff. The reasoning of the learned trial Court will be noticed in the course of this judgment. The suit was dismissed as being not maintainable. An appeal preferred by the plaintiff before the District Judge, was also dismissed.

This appeal was admitted on two substantial questions of law. Third question was allowed to be urged since it arose from the facts and material on the record and did not require any additional evidence or documents. This question namely; ***"Whether the Courts below were correct in dismissing the suit of***

the plaintiff when the defendant, who was author of the agreement Ex.PW-2/A, had not appeared in the witness box without any justifiable reason and an adverse inference ought to be drawn against her under Section 114 of the Evidence Act*?",* needs to be decided before the other questions which arise in the appeal. The crucial point to be determined is, as to whether an adverse inference should be drawn against defendant No.1 Rahaunsu Devi, who, was admittedly, alive on the day when the evidence in the suit was recorded but withheld herself from the witness box without any justifiable cause. It needs to be noticed that only defendant No.2 has appeared in the witness box as DW-1 and has said very little about the agreement Ex.PW-2/A except the fact that it may have been executed by defendant No.1. He does not give any reason as to why his mother defendant No.1, did not appear as a witness, more especially when she was the executant of Ex.PW-2/A which was thumb marked by her and which was the basis and foundation of the suit.

In ***Ishwar Bhai C.Patel @ Bachu Bhai Patel*** *vs.* ***Harihar Behera & Anr. JT 1999(2) SC 250***, the Hon'ble Supreme Court, after considering the law, has held:

> ***"16.*** *As early as in 1927, the Privy Council in* ***Sardar Gurbakhsh Singh v. Gurdial Singh and another, AIR 1927 Privy Council 230,*** *took note of a practice prevalent in those days*

of not examining the parties as a witness in the case and leaving it to the other party to call that party so that the other party may be treated as the witness of the first party. Their Lordships of the Privy Council observed as under:-

> *"Notice has frequently been taken by this Board of this style of procedure. It sometimes takes the form of a maneuver under which counsel does not call his own client, who is an essential witness, but endeavours to force the other party to call him, and so suffer the discomfiture of having him treated as his, the other party's, own witness.*
>
> *This is thought to be clever, but it is a bad and degrading practice. Lord Atkinson dealt with the subject in* ***Lal Kunwar v.Chiranji Lal (1),*** *calling it "a vicious practice, unworthy of a high-toned or reputable system of advocacy."*

They further observed as under:-

"But in any view her non-appearance as a witness, she being present in Court, would be the strongest possible circumstance going to discredit the truth of her case."

17. *Their Lordships also took note of the High Court finding which was to the following effect:-*

> *"It is true that she has not gone into the witness box, but she made a full statement before Chaudhri Kesar Ram, and it does not seem likely that her evidence before the Subordinate Judge would have added materially to what she had said in the statement."*

They observed:-

> *"Their lordships disapprove of such reasoning. The true object to be achieved by a Court of justice can only be furthered with propriety by the testimony of the party who personally knowing the whole circumstances of the case can dispel the suspicions attaching to it. The story can then be subjected in all its particulars to cross-examination."*

18. *This decision has since been relied upon practically by all the High Courts.* ***The Lahore High Court in Kirpa Singh vs. Ajaipal Singh and***

others, AIR 1930 Lahore *1,observed as under:-*

> *"It is significant that while the plaintiffs put the defendant in the witness-box they themselves had not the courage to go into the witness-box. Plaintiffs were the best persons to give evidence as to the "interest" possessed by them in the institution and their failure to go into the witness-box must in the circumstances go strongly against them."*

19. *This decision was also relied upon by the Bombay High Court in* ***Martand Pandharinath Chaudhari vs. RadhabaiKrishnarao Deshmukh, AIR 1931 Bombay 97,*** *which observed as under:-*

> *"It is the bounden duty of a party personally knowing the facts and circumstances, to give evidence on his own behalf and to submit to cross-examination and his non-appearance as a witness would be the strongest possible circumstance which will go to discredit the truth of his case."*

20. *The Lahore High Court in two other cases in 1934, namely,* ***Bishan***

Das vs. Gurbakhsh Singh and another, AIR 1934 Lahore 63(2) *and* ***Puran Das Chela vs. Kartar Singh and others, AIR 1934 Lahore 398*** *took the same view.*

21. *A Division Bench of the Patna High Court in* ***Devji Shivji vs. Karsandas Ramji and another, AIR 1954 Patna 280,*** *relying upon the decision of the Privy Council in* ***Sardar Gurbakhsh Singh vs. Gurdial Singh and another (supra)*** *and the Madhya Pradesh High Court in* ***Gulla Kharagjit Carpenter vs. Narsingh Nandkishore Rawat, AIR 1970 Madhya Pradesh 225*** *have also taken the same view. The Madhya Pradesh High Court also relied upon the following observation of the Calcutta High Court in* ***Pranballav Saha & Anr. vs. Sm.Tulsibala Dassi & Anr., AIR 1958 Cal. 713 :-***

> *"The very fact that the defendant neither came to the box herself nor called any witness to contradict evidence given on oath against her shows that these facts cannot be denied. What was prima facie against her became conclusive proof by her failure to deny.*

22. *The Allahabad High Court in* ***Arjun Singh v. Virender Nath and another, AIR 1971 Allahabad 29,*** *held that:*

> *"the explanation of any admission or conduct on the part of a party must, if the party is alive and capable of giving evidence, come from him and the court would not imagine an explanation which a party himself has not chosen to give.:*
>
> *It was further observed that:-*
>
> *"If such a party obtains from entering the witness box it must give rise to an inference adverse against him".*

24. *A Division Bench of the Punjab & Haryana High Court also in* ***Bhagwan Dass v. Bhishan Chand and others, AIR 1974 Punjab & Haryana 7****, drew a presumption under Section 114 of the Evidence Act that if a party does not enter into the witness box, an adverse presumption has to be drawn against that party.*

25. *Applying the principles stated above to the instant case, it would be found that in the instant case also the appellant had abstained from the witness box and had not made any statement on oath in support of his pleading set out in the written statement. An adverse inference has, therefore, to be drawn against*

> *him. Since it was specifically stated by respondent No.2 in his statement on oath that it was at the instance of the appellant that he had issued the cheque on the account of respondent No.1 in the Central Bank of India Ltd., Sambalpur Branch, and the appellant, admittedly, had encashed that cheque, an inference has to be drawn against the appellant that what he stated in the written statement was not correct. In these circumstances, the High Court was fully justified in decreeing the suit of respondent No.1 in its entirety and passing a decree against the appellant also."*

Similarly, in ***Vidhyadhar*** *vs.* ***Manikkrao & Anr. JT 1999(2) 183,*** it has been held that:

> ***"17.*** *Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in* ***Sardar Gurbakhsh Singh v. Gurdial Singh and another, AIR 1927 Privy Council 230.*** *This was followed by the Lahore High Court in* ***Kirpa Singh v. Ajaipal Singh and others AIR 1930***

> ***Lahore 1*** *and Bombay High Court in* ***Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh, AIR 1931 Boimbay 97.*** *The Madhya Pradesh High Court in* ***Gulla Kharajit Carpenter v. Narsingh Nandkishore Rawat, AIR 1970 Madhya Pradesh 225*** *also followed the Privy Council decision in Dardar Gurbakhsh Singh's case (supra). The Allahabad High Court in* ***Arjun Singh v. Virender Nath and another, AIR 1971 Allahabad 29*** *held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in* ***Bhagwan Dass v. Bhishan Chand and others, AIR 1974 Punjab & Haryana 7,*** *drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box".*

These judgments have been followed by this Court in ***Tokha vs. Smt.Biru and others, AIR 2003 Himachal Pradesh 107,*** when an adverse inference was drawn against the person who had failed to appear as a witness in the case. It has been held that:-

> ***"24.*** *Admittedly, the plaintiff has not stepped into the witness box. Her special attorney has appeared as PW-1. One of the material issue involved in the present appeal is whether the donee or after his death the defendants have failed to*

provide maintenance to the plaintiff and thus the deed of gift and the consequential mutation of the estate of the deceased Singh in favour of the defendants are liable to be set aside. It was the plaintiff to state and rebut that the deed of gift executed by her in favour of the donee was conditional and after the death of the donee the defendants have failed to maintain her. PW-1 has simply pleaded ignorance to the facts. On the failure of the plaintiff to step in the witness box and depose in support in the witness box and depose in support of her case and to subject herself to cross-examination, an adverse inference will have to be drawn against her. The appearance of special attorney cannot be treated as having appeared in the capacity of plaintiff. Such appearance is only as a witness in his personal capacity. It has been held by the Supreme Court in Vidadhar v. Manikrao, (1993) 3 SCC 573: (AIR 1999 SC 1441) that where the plaintiff to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct. (see Gurdev Singh v.Gulabrao, 2000(3) Shiml.L.C. 285, Mohinder Singh v.Kurukshetra

University 2001(2)Shim LC 246, Harswarukp v. Ram Lok Sharma, 2000(3) Shim.L.C., 160; Ishwar Bhai C.Patel v. Harihar Behera, 1999(2) Current Civil Cases 171: (AIR 1999 SC 1341) (SC): Roshan Lal v. Krishan Dev, 2002 (1) Cur LJ (HP) 261 and Ram Parsad V. Hari Narain, AIR 1998 Rajasthan 185 (Jaipur Bench).

25. *In Rattan Dev v. Pasam Devi, (2002) 7 SCC 441, the Supreme Court has held that the proposition of law laid down in Ishwar Bhai C.Patel v. Harihar Behera, (AIR 1999 SC 1341) is undoubtable wherein it has been emphasized that withholding of the plaintiff himself from the witness box and thereby denying the defendant an opportunity for cross-examination of himself results in an adverse inference being drawn against the plaintiff.*

26. *Since the plaintiff has failed to step in the witness box, an adverse inference has to be drawn against her and as such she cannot be said to be entitled for relief sought for in the suit. The other evidence adduced by the plaintiff does not support the case of the plaintiff that she was not at all maintained by the defendants. The finding of the first appellate Court which is to the contrary is liable to be set aside".*

The Hon'ble Supreme Court in ***Bajranglal Shivchandrai Ruia*** *vs.* ***Shashikant N.Ruia and others, AIR 2004 SC 2546,*** while dealing with the effect of issuance of a sale certificate, held that in the absence of any of the competent officers of the plaintiff appearing in the witness box substanting the averments in the plaint or in the appeal, no relief could be granted to the plaintiff. It was held:-

> ***"96.*** *… … … … … … … … … …The Division has made a very curious finding that "the sale certificate was issued in favour of the plaintiff by the Corporation and was duly registered." We must say that this finding is totally without basis. The sale certificate exfacie shows that it was given in the name of plaintiff Satyavati and there is no record in the BMC books that the plaintiff was registered as the highest bidder nor as a purchaser in the auction sale. Neither the plaintiff Satyavati, Janardan Dhuri, nor any competent officer of the BMC entered the witness box to explain this discrepancy as to how the sale certificate was issued in the name of Satyavati when the highest bidder was Janardhan Dhuri, who did not even claim to have bid as an agent of Satyavati. It is only in the plaint that the plaintiff for the first time claimed that she had paid the entire price of the auction sale. This was an averment in the plaint which was not*

> *substantiated by any evidence. Nonetheless, the Division Bench facilely accepted this averment and held that the sale certificate was issued in favour of the plaintiff as Janardan Dhuri was the highest bidder and because he was in the employment of Ramprasad, the certificate of the sale could be in the name of Satyavati and it conveyed her good title. To say the least the reasoning appears to be faulty".*

In ***Janki Vashdeo Bhojwani and another*** *vs.* ***Indusind Bank Ltd. and others AIR 2005 SC 439,*** the Hon'ble Supreme Court laid down :-

> *"In the context of the directions given by this Court, shifting the burden of proving on the appellants that they have a share in the property, it was obligatory on the appellants to have entered the box and discharged the burden by themselves. The question whether the appellants have any independent source of income and have contributed towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by a mere holder of power of attorney from them. The power of attorney holder does not have the personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined*

> *on those facts which are to the personal knowledge of the principal.*
>
> *Order III, Rules 1 and 2 CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined".*

Ex.PW-2/A is the agreement which is the foundation of the suit instituted by the plaintiff. The stand taken by the defendants in the written statement that such an agreement was a forgery or that it was not meant to confer any benefit on the plaintiff, as a fact could be determined either by reading the agreement as it is or on the evidence of the defendant. She did not step into the witness box

to state that the agreement was forged or not meant to be acted upon or that it was never executed by her. She did not present herself for cross-examination to state as to under what circumstances her thumb impression was put on the agreement in the presence of the witnesses. This crucial aspect of the case has been ignored and glossed over by the learned Courts below who have proceeded to decide the case on conjectures rather than on the evidence on record. Plausibility of a particular fact being in existence cannot take the place of actual proof establishing the fact. The only inference which can be drawn in the facts and circumstances is that having taken a plea, negating the argument; the defendants abandoned the plea herself by withholding the best evidence available which was the defendant herself. Of-course, this does not preclude the decision of the matter on a consideration of Ex,.PW-2/A which is a written document. In these circumstances, there can be no conclusion except that the plaintiff is entitled to the relief as claimed for as an adverse inference has to be drawn against defendant No.1 who has, without reasonable cause, kept herself away from the witness box to avoid cross-examination or to establish the plea which had been taken regarding the non-execution/forging Ex.PW-2/A. Considering the evidence of defendant No.2, a bald denial regarding execution of the agreement which was neither scribed nor signed

by him or in his presence; cannot be accepted as proof of the fact that such agreement was neither executed or meant to be acted upon or that the facts leading to the execution of the agreement Ex.PW-2/A, did not in-fact exist. The only statement which defendant No.2 made was that his mother had never executed an agreement or that such agreement may have been executed. This question is answered in favour of the appellant.

Question No.1

Whether the Courts below have misread and misinterpreted the oral and documentary evidence on record to hold that agreement Ext.PW-2/A was not entered into between the parties, specific performance of which has been sought for by the appellant-plaintiff?

I have already held that the defendant deliberately having kept away from the witness box, an adverse inference ought to be drawn against her. The agreement Ex.PW-2/A was scribed by PW-2 Shri Onkar Thakur, Advocate. He has stated in clear terms that this was written on the instructions of defendant No.1 Rahaunsu Devi and contained all the terms, conditions and stipulations as communicated by her to him. He also states that the agreement was thumb marked by defendant No.1 and the two witnesses namely; Megha Ram and Dharami Devi in his presence and he identified their respective thumb marks. Megha Ram is PW-3 and

has corroborated PW-2. The learned trial Court notices the fact that defendant No.1 Rahaunsu Devi has not appeared as a witness and has denied the receipt of the ornaments in the written statement filed by her. Strangely, the trial Court comes to a conclusion, without evidence that "the family secrets or the financial position of the family at the time of marriage would not be known to other persons except the parties". The evidence of Tulsi Ram and Milkhi Ram, two other witnesses PW-4 and PW-7, on the fact that the plaintiff had parted with the ornaments for wedding of defendant No.2, has been brushed aside on the premise that these witnesses were tutored. The learned trial Court was duty bound in law to have indicated clearly the circumstance(s) which negatives the veracity of the deposition made by these two witnesses and then consider the other evidence as to why PW-2 and PW-3, the scribe and the witness to the agreement are to be disbelieved. The evidence had to be considered by the learned trial Court in its totality, in conjunction and not in isolation. No conjectural inference is permissible. No such exercise having been undertaken, I hold that the learned trial Court has committed a serious illegality in holding that no right had been conferred on the plaintiff and that she had not parted with the possession of jewelry as pleaded by her. To arrive at this conclusion, the evidence is not being re-appreciated. It is

fundamental that the evidence of all the witnesses has to be considered in its totality to ascertain as to whether the facts constituting or negating a cause have been established or not, and not in isolation to make out a convenient case for a particular party. This is against the fundamentals of the law of evidence. Coupled with the fact that the defendant herself did not appear in the witness box is sufficient to arrive at a finding that the agreement was in-fact executed for the reasons as alleged in the plaint and the attempt of the defendant to keep away from the witness box was to avoid cross examination least the truth should be elicited from her. The terms of the agreement Ex.PW-2/A are clear. The evidence of the scribe and the attesting witnesses cannot be brushed aside on conjecture. The learned Courts below do not assign any reason to discard the evidence of these witnesses. This question is answered in favour of the appellant. I hold that the agreement Ex.PW-2/A was entered into between the plaintiff and defendant No.1.

Question No.2:

Whether the District Judge is right in holding that suit of the appellant-plaintiff is not governed under Section 10 of the Specific Relief Act, as such, it was not maintainable?

The learned District Judge is in clear error in ignoring the provisions of the Specific Relief Act,

1963 (hereinafter referred to as the `Act'). A passing reference to the provisions by reference to the Sections of the statute without noting its contents is hardly sufficient to hold that the provisions do not apply to a particular case. It is strange that the learned District Judge notes that Sections 10 and 14 constitute a bar for the specific enforcement of Ex.PW-2/A. It must be noticed that the plaintiff has prayed for a decree for specific performance and in the alternative a decree for a sum of Rs.35,000/-. If the provisions of Section 10 of the Act are considered, the explanation enacts that unless the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money. The provisions may be noticed:

> *"**10. Cases in which specific performance of contract enforceable.-** Except as otherwise provided in this Chapter, the specific performance of any contrary may, in the discretion of the Court, be enforced-*
>
> ***(a)** when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; or*
>
> ***(b)** when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.*

Explanation-

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:-

(a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;

(b) where the property is held by the defendant as the agent or trustee of the plaintiff.

Section 14 provides:

*"**14.** Contracts not specifically enforceable.**-(1)** The following contracts cannot be specifically enforced, namely:-*

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details or

which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the Court cannot supervise.

2. *Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.*

3. *Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the Court may enforce specific performance in the following cases:-*

(a) where the suit is for the enforcement of a contract,-

(i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once.

Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or

(ii) to take up and pay for any debentures of a company;

(b) where the suit is for,-

(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or

(ii) the purchase of a share of a partner in a firm;

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:

Provided that the following conditions are fulfilled, namely:-

(i) the building or other work is described in the contract in terms sufficiently precise to

enable the Court to determine the exact nature of the building or work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed."

The learned Appellate Court has not detailed the circumstances attracting the provisions of Section 14 providing that Specific Performance of the Contract cannot be granted. There is nothing on the record to show as to why the agreement Ex.PW-2/A cannot be enforced or why alternate prayer for recovery of money cannot be granted. A perfunctory observation that Section 10 bars the performance of the contract is no finding in law. It may also be noticed that the alternate relief prayed for by the plaintiff has been totally ignored. If decree for specific performance

is not possible then monetary compensation should have been granted.

In the facts and circumstances as discussed above, the suit of the plaintiff is accepted and the judgments and decrees of the Courts below are quashed and set aside. Considering the relief to be granted, the prayer of the plaintiff for a decree of Rs.35,000/- is allowed. Granting a decree for possession of the land at this stage after a lapse of long period of time would not be equitable. In addition to the amount, the plaintiff will be entitled to interest at the rate of 6% per annum from the date of suit till its recovery. The plaintiff will also be entitled to costs throughout.

August 21, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**